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SIPDIS

TREASURY FOR FTAT AND OCC/EILEEN SIEGEL
TREASURY ALSO FOR OASIA/ICB/VIMAL ATUKORALA
TREASURY PASS FEDERAL RESERVE, FINCEN, SEC/E.JACOBS

E.O. 12958: N/A
TAGS: EFIN AU
SUBJECT: Austria Restricts Short Selling, But No Ban;
No Immediate Prospect for Further Reform

REF: VIENNA 1120

¶1. SUMMARY: On September 22, Austria's Financial Market Supervision (FMA) restricted short-selling by defining stricter parameters for market manipulation and insider trading. Regulators are unhappy that they cannot ban short sales outright since a legislative motion approved by the outgoing parliament is now void and must be reintroduced in the new parliament. In August, the supervisory authorities presented a package for improving financial market supervision but there is little prospect of quick action. END SUMMARY.

Financial Market Authority Restricts Short Selling
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¶2. In a September 22 circular, the Austrian Financial Market Authority (FMA) restricted short selling that constitutes market abuse or insider trading, with detailed reporting requirements. In its circular, the FMA refers to the Austrian Stock Exchange Act paragraph 48d/9 (market manipulation) and paragraph 48e/5 (covering actions carried out both in Austria or abroad) and to the EU's Market Abuse Directive. The main points of the FMA's circular as they apply to short sales:

-- Taking on or holding net short positions may constitute market abuse. A net short position is defined as offsetting and/or aggregated positions in a financial instrument.

-- To determine whether a "net short position" exists, the entire financial interest in the price development of a specific financial instrument has to be assessed. This includes equities as well as derivatives (e.g., options, futures, convertible bonds).

-- A net short position of more than 0.25% of an issuer's capital outstanding is regarded as a significant indicator of a situation of market abuse.

-- In addition, the Vienna Stock Exchange and the central clearing agent CCP.A, in co-ordination with FMA, have reduced by 8 days the period allowed for covering deliveries not made on time.

-- Market manipulation includes the spreading of rumors as well as false and misleading information. Under the law, such situations must be reported to FMA without delay.

-- These provisions also apply to transactions that

were carried out abroad but involve financial instruments admitted to trading on a regulated market in Austria.

¶3. The FMA has reportedly intensified the exchange of information and data with the Committee of European Securities Regulators (CESR). The FMA has alerted custodian banks to the relevant provisions of the Safe Custody Act (Depotgesetz) under which they are also required to monitor their clients' compliance with delivery obligations. Using third-party securities as security for delivery obligations is illegal, the FMA reconfirmed.

Parliamentary Action Void Due to Elections

¶4. In the final plenary session of Parliament's Lower House (Nationalrat) September 24, the OVP and BZO filed a motion asking the Finance Minister to strengthen financial market supervision and restrict manipulative short-selling. The motion, based on an initiative of the Austrian Financial Market Authority (FMA) and the Austrian National Bank (OeNB), was approved with a majority, except for votes of the SPO. The FMA and OeNB are unhappy that the motion was not accepted unanimously, because short selling reportedly is a widely used practice on the Vienna Stock Exchange, which due to its low market capitalization could become a serious danger for companies and the Austrian economy as a whole. Moreover, Austria is not following the example of

many important financial markets, including the U.S., UK and Germany, where short selling has been banned, at least temporarily. The September 24 motion is now void must be reintroduced in the new Parliament. Since its constitutive session is not scheduled until October 28 -- and Austria will probably still have a caretaker government then -- any new motion must wait until at least November.

COMMENT

¶5. The untimely collapse of the last government and the dissolution of Parliament are only partly to blame for the weak response to the financial crisis. In recent months, the authorities have not responded to the international financial crisis, an issue which also failed to gain traction during the September election campaign. As reported (reftel), the financial market reform that took effect January 1 was limited by party politics, a point driven home by the fact that barely eight months later (August 8), the FMA and OeNB presented a joint package for further reform of financial market supervision on issues including off-balance positions, supervision of trusts, balance sheet regulations for derivative products and hedging, regulations for guarantees, and additional powers for the supervisors such as search/seizure and higher penalties. In the near term, Austrian regulators must make the best of their limited powers.

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